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Supreme Court, U.S.
FILED

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No. _____

IN THE SUPREME COURT

OF THE

UNITED STATES OF AMERICA

October Term, 1993

HENRY JACKSON, JR., Petitioner

vs.

MANHATTAN AND BRONX SURFACE TRANSIT OPERATING AUTHORITY (M.A.B.S.T.O.A.); TRANSIT SUPERVISORS ORGANIZATION (CHAIRMAN JOSEPH O'BRIEN); C.VERNON MASON, ESQ.; EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (DISTRICT DIRECTOR EDWARD MERCADO); NEW YORK EXECUTIVE DEPARTMENT DIVISION OF HUMAN RIGHTS (REGIONAL DIRECTOR PAULA G. SAWYER); THE CIVIL COURT OF THE CITY OF NEW YORK (JUDGE JANE S. SOLOMON); DEPARTMENTAL DISCIPLINARY COMMITTEE (DEPUTY CHIEF COUNSEL RICHARD M. MALTZ)
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

HENRY JACKSON, JR., PRO SE
628 BAUER COURT
ELMONT, NEW YORK 11003
(516) 328-0049

QUESTIONS PRESENTED

1. What is the significance of Respondents changing the suit for damages, from under the Fourteenth Amendment to the state 42 U.S.C.A. 1983, which was first hinted by C. Vernon Mason, Esq. in his motion papers and later assumed and adopted by Chief Magistrate Judge Nina Gershon in her Report and Recommendation; Petitioner brought this action against these Respondents as a result of their conspiracy against him to deny him the equal protection of the laws because he is a layman a violation of the Fourteenth Amendment to the Constitution of the United States?

2. According to the evidence, can it not be gleaned that C. Vernon Mason, Esq. spearheaded the conspiracy and used the wrongdoings against these involved officials to blackmail even higher officials to become involve in the conspiracy because of their desire to protect those of-

ficials?

3. Is it not evident through Mr. Mason's letters and Petitioner's to one another that Petitioner became unwittingly involved in an ongoing scheme involving Mr. Mason and the New York City Transit Authority and/or MABSTOA?

4. According to the evidence, is my Complaint about employment discrimination as this Court has it, or is it about a campaign of harassment by MABSTOA to destroy my career which stems from a promotion incident?

5. Inferring from the evidence, why was Staff Investigator Patrick A. Smith mysteriously removed from investigating C. Vernon Mason, Esq.?

6. According to evidence from Petitioner's Affidavit dated June 29, 1992, why Mr. Mason's Answer and Counterclaim, 58261/89, dated March 13, 1989 that was in the package of Mr. Mason's fraudulent Motion papers was replaced with an Answer and Counterclaim, 5889/89, dated August 22, 1989 the same day of the Inquest?

7. According to the evidence from Petitioner's Affidavit dated June 29, 1992, why did the New York State Executive Division of the Department of Human Rights falsely say in its "Order of Withdrawal" letter dated November 2, 1988 that Petitioner filed a complaint with it on July 28, 1988 when it was sent to this agency by the EEOC according to the EEOC's letter stamped August 19, 1988?

8. According to the evidence from Petitioner's Affidavit dated June 29, 1992, why did Deputy Superintendent Vence, Jr. order Petitioner to write every bus up coming in downstairs for exterior dirtiness, whether it was dirty or not, to be washed when every bus coming in in the downstairs lane would be automatically washed anyway, regardless, because the washer was situated over part of the lane the bus must travel in order to be parked while paying no attention to the work of the supervisor who was checking buses in the lane for upstairs parking which

buses must be turned around and brought in the downstairs lane to be washed if they were dirty because there was no washer in the upstairs lane (Mr. Vence, whom Petitioner never saw before that night, secretly wrote an unsigned trumped-up violation on Petitioner)?

9. According to the evidence from Petitioner's Affidavit dated June 29, 1992, why did Chairman Joseph O'Brien of the Transit Supervisors Organization secretly replaced a trumped-up charge in Petitioner's file he had fought so hard to have removed (Petitioner was, at that time, de facto barred from the General's office where employees's records were kept)?

10. Petitioner beseech your Honor(s) to, at least, obtain these affidavits: Affidavit dated June 29, 1992 and its Exhibits from one (1) to forty (40); Affirmation dated July 17, 1992 and Exhibits AA to 6AA; Affidavit dated August 11, 1992 and Exhibits 41 to 44; Affidavit dated August 19, 1992 and Exhibits 45 and 46, in or-

der to ascertain to some extent the level of corruption in this case?

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NO. _____

IN THE SUPREME COURT

OF THE

UNITED STATES OF AMERICA

October Term, 1993

Henry Jackson, Jr., Petitioner

vs.

MANHATTAN AND BRONX SURFACE TRANSIT OPERATING AUTHORITY (M.A.B.S.T.O.A.); TRANSIT SUPERVISORS ORGANIZATION (CHAIRMAN JOSEPH O'BRIEN); C.VERNON MASON, ESQ.; EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (DISTRICT DIRECTOR EDWARD MERCADO); NEW YORK EXECUTIVE DEPARTMENT DIVISION OF HUMAN RIGHTS (REGIONAL DIRECTOR PAULA G. SAWYER); THE CIVIL COURT OF THE CITY OF NEW YORK (JUDGE JANE S. SOLOMON); DEPARTMENTAL DISCIPLINARY COMMITTEE (DEPUTY CHIEF COUNSEL RICHARD M. MALTZ), Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner, Henry Jackson, Jr., respectfully prays that a writ of certiorari issue to re-

view the judgment and opinion of the United States Court of Appeals for the Second Circuit for allowing the lawsuit for damages to remain under state law U.S.C.A. 1983 which law suggested by C. Vernon Mason, Esq. in his motion papers to Chief Magistrate Judge Nina Gershon and assumed by him and the other Respondents and, subsequently, assumed and adopted by Chief Magistrate Judge Gershon in her Report and Recommandation. Judge Gershon specifically stated in her Report in the first paragraph on MABSTOA:

> "Although he does not specify reliance upon 42 U.S.C.A. 1983,"...

Petitioner specified reliance in his Brief to the Court of Appeals on the Fourteenth Amendment:

> "Basis for the subject matter in the District Court: Plaintiff claiming damages under the Fourteenth Amendment and 28 U.S.C.S. 1331." Petitioner is being taken advantage of in such manner because he is a layman.

OPINIONS BELOW

The opinion of Court of Appeals is reported as Henry Jackson, Jr. v. MABSTOA, et al, 93-6102 (2nd Cir. 1994), and appears in Appendix A to this Petition. The unpublished written opinion of the District Court for the Southern District of New York appears in Appendix B to this Petition. The unpublished recommended ruling of the Magistrate, adopted by the District Court for the Southern District of New York, appears in Appendix C.

JURISDICTION

The Court of Appeals' Opinion in this matter was filed on January 14, 1994. A timely Petition for Rehearing was filed on January 28, 1994. The Court of Appeals' denial of the Petition for Rehearing was issued on February 23, 1994 and is set forth in Appendix D. This Court's jurisdiction is invoked under Title 28, U.S.C.S. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

Amendment XIV to the United States Constitution is set forth in Appendix E.

STATEMENT OF THE CASE

The United States District Court, Southern District of New York, had jurisdiction pursuant to 28 U.S.C.S. 1331.

On April 1, 1992 Complaint was filed in this action against Manhattan and Bronx Surface Transit Operating Authority ("MABSTOA"); Transit Supervisors Organization ("TSO"), and its Chairman Joseph O'Brien; C. Vernon Mason, Esq.; the Equal Employment Opportunity Commission ("EEOC"), and District Director Edward Mercado; New York Executive Department Division of Human Rights ("NYEDDHR"), and Regional Director Paula G. Sawyer; The Civil Court of the City of New York and Judge Jane S. Solomon; and the Departmental Disciplinary Committee

and Deputy Chief Counsel Richard M. Maltz.

By Order filed on April 3, 1992, the District Court referred the case to Chief Magistrate Judge Nina Gershon. "Various motions were filed by the parties, including motions to dismiss by the State defendants and MABSTOA pursuant to Fed. R. Civ. P. 12(b)(1) and (6). In a Report and Recommendation filed July 31, 1992, the Magistrate Judge 'assumed and adopted' the complaint as one brought pursuant to 42 U.S.C.S. 1983, recommended that the complaint against MABSTOA be dismissed as barred by the statute of limitations. She also recommended that the claims against Judge Solomon be dismissed on the ground of judicial immunity. With regard to the other State defendants, she recommended that the complaint be dismissed because, to the extent that they were sued in their official capacities, they were not persons within the meaning of section 1983, and to the extent that they were sued in their personal capacities,

the complaint failed to state a claim upon which relief could be granted.

In an Opinion and Order entered on April 14, 1993, the District Court adopted the Magistrate Judge's Report and Recommendation and dismissed the action as to the defendants considered in the Report. The District Judge also dismissed the action with regard to the remaining defendants."

On August 13, 1992, Petitioner filed his objections to the Recommendations of the Magistrate. On April 13, 1993, the District Court issued its Order and Memorandum adopting and accepting the Magistrate's Recommendation, dismissing Petitioner's objections to the Magistrate's Memorandum and Recommendation, with prejudice, against all defendants.

On April 26, 1993, Petitioner filed an Appeal, Pro Se. On June 24, 1993, Petitioner filed his Brief. On August 16, 1993, Petitioner's Reply Brief was filed; On August 19, 1993,

an Order filed granting motion for leave to file ove-sized brief (424750-1) by Petitioner, endorsed on motion form dated August 16, 1993. "Appellant's reply brief shall be filed CJM (prp)."

On December 7, 1993, the case was set for argument on January 12, 1994. (93-6102) USCIT (cac). On January 12, 1994, Case submitted before Miner, Mahoney, Restani, at USCIT (TAPE NO.:---) (Cag). On January 14, 1994, the Judgment of the United States District Court was affirmed.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted for two reasons: This Petition presents an issue for damages under Fourteenth Amendment that was arbitrarily changed to state 42 U.S.C.A. 1983 by the Respondents and subsequently assumed and adopted by this Court; and the Opinion below is different from previous Opinions of this Court

and from the Opinion of another Circuit.

This Court in Blake v. Town of Delaware City, Cite as 441 F. Supp. 1189 (1977), unlike this Court, concludes that Plaintiff's complaint against officials in their individual capacities under civil rights statute affording remedy for conspiracy to deprive person or class of persons equal protection of laws were sufficient to support cause of action against them for conspiracy under civil rights statute prohibiting deprivation of federal civil rights under color of law:

> ..."Plaintiff who failed to allege class-based motivation failed to state cause of action against city officials in their individual capacities under civil rights statute affording remedy for conspiracy to deprive person or class of persons equal protection of laws; however, allegation of plaintiff's complaint were sufficient to support cause of action against city officials in their individual capacities for conspiracy under civil rights statute prohibiting deprivation of federal civil rights under color of state law;"... 441 F. Supp. at 1190.

This Court in Blake warns against a request

for the judicial creation of a supplemental, such as the stat- 42 U.S.C.A. 1983, damages remedy arising directly under a constitutional provision as was hinted by C. Vernon Mason, Esq. in this instant case in his motion papers to Chief Magistrate Judge Nina Gershon of which she subsequently assumed in her Report and Recommendation:

> "'When there is a request for the judicial creation of a supplemental damages remedy arising directly under a constitutional provision, Biven. . . teaches that a federal court should proceed with caution. Compare Cort v. Ash, 422 U.S. 66, 78, 95 S. Ct. 2080, 45 L. Ed. 2d 26(1975). It should carefully assess the existing remedies and consider the extent to which there has been a Congressional or other determination that the supplemental remedy should not be available.' Kostka v. Hogg, 560 F. 2d 37 at 42(C.A. 1, 1977)" 441 F. Supp. at 1197.

Further, this Court in Blake states:

> "The only alternative remedy available in Bivens was a state tort law action against the federal officers, which the Court found inadequate because (1) state tort law might not protect all the interests protected by the Fourteenth

Amendment and (2) state law could not 'undertake to limit the extent to which federal authority can be exercised.'" 441 F. Supp. at 1197.

Furthermore, this Court in Blake continues:

"First, the Fourteenth Amendment contains an enforcement provision, Section five of the Fourteenth Amendment provides: 'Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.' Which clearly indicates 'that the framers of the Fourteenth Amendment intends to confer upon Congress--not the courts--the primary responsibility for developing appropriate measures to enforce the Amendment.' ... Although Section five does not preclude the courts from developing remedies to enforce the Fourteenth Amendment (citation omitted), it 'counsels strongly against judicial alteration of the scheme of enforcement developed by Congress.'" 441 F. Supp. at 1198, Id. at 1059.

Therefore, the basis for the Respondents arbitrary change from the Fourteenth Amendment to state law 42 U.S.C.A. 1983, is amply explained in this Court in Blake, supra, and below:

"The second factor 'counselling hesitation' against implying a cause of action here is the fact that although Congress, by enacting Section 1983, created a damage remedy for violations of Fourteenth Amendment rights,

it chose to exempt municipalities from liability under that section. Monroe v. Pape, supra. Related to this is the third factor, namely, 'the failure of Congress to bring municipalities within the scope of 42 U.S.C.S. 1983 during the sixteen years since Monroe v. Pape was decided.'" 441 F. Supp. at 1198.

This Court, here, in Denver Welfare Rights Organization v. Public Utilities Comm., Colo., 547 P. 2d 239, 243., affirms the myth about Section 1983:

> "In determining whether an action complained of constitutes 'state action' within purview of Fourteenth Amendment, court must examine whether sufficiently close nexus exists between state and challenged action so that the action may fairly be treated as that of the state itself. . . . There is no practical distinction between what constitutes 'state action' for purpose of Fourteenth Amendment and what is required to fulfill 'under color of state law' provision of 42 U.S.C.A. 1983. Onzts v. Maryland Nat. Ins. Co. C.A. Nev., 505 F. 2d 547, 549. See color of law."

According to Black's Law Dictionary, the use of state law 42 U.S.C.A. 1983, is used by officials as in this instant case to shield themselves from their wrongdoings since under

this law history has it that the courts and even Congress have thus far failed to prosecute these people for their wrongdoings. The definition for the "color of law" is as follow:

> "The appearance or semblance, without the substance of legal right. Misuse of power, possessed by virtue of state law and made possible only because wrongdoer is clothed with authority of state, is action taken under 'color of state law.' Atkins v. Lanning, D.C. Okl., 415 F. Supp. 186, 188."

In light of the above information, the arbitrary switch from the Fourteenth Amendment to state law 42 U.S.C.A. 1983 against a layman, such as Petitioner, by such legal scholars and this Court, is a gross violation of Petitioner's Rights of the Fourteenth Amendment to the Constitution of the United States.

According to the Court in Craig v. United States, 81 F.(2d) 816, the action that has been perpetrated against Petitioner by these various Respondents since the inception of this case constitutes a conspiracy:

"(8) Nor does the alleged fact that McKeon entered the conspiracy after it was formed by the appellants affect the existence of the general scheme. 'Such a conspiracy may be a continuing one; actors may drop out, and others drop in; the details of operation may change from time to time; the members need not know each other, or the part played by others; a member need not know all the details of the plan or the operations; he must, however, know the purpose of the conspiracy and agree to become a party to a plan to affectuate that purpose." 81 F. (2d) at 822.

CONCLUSION

For the reasons set forth above, a writ of certiorari should be issued to review the judgment and opinion of the Court of Appeals in this matter.

If this Court elects not to address the issues presented in this writ at the present time, it is requested that the writ issue and that the matter be remanded to the Court of Appeals for redetermination in light of this Court's opinion in Blake, supra, Denver Welfare Rights Organization, supra, and Craig, supra.

Dated: April 28, 1994

Respectfully submitted,

HENRY JACKSON, JR.
(PRO SE)

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

PRESENT: HON. ROGER J. MINER,
HON. J. DANIEL MAHONEY,
Circuit Judges,
HON. JANE A. RESTANI,
Judge. JAN 14 1994

HENRY JACKSON, JR., Plaintiff-Appellant,

v. ORDER
93-6102

MANHATTAN AND BRONX SURFACE TRANSIT OPERATING AUTHORITY; TRANSIT SUPERVISORS ORGANIZATION (CHAIRMAN JOSEPH O'BRIEN); C. VERNON MASON, Esq.; EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (District Director Edward Mercado); NEW YORK EXECUTIVE DEPARTMENT DIVISION OF HUMAN RIGHTS; PAULA G. SAWYER, Regional Director; CIVIL COURT OF THE CITY OF NEW YORK; JANE S. SOLOMON, Judge; DEPARTMENTAL DISCIPLINARY COMMITTEE; and RICHARD M. MALTZ, Deputy Chief Counsel,
Defendants-Appellees.

Upon consideration of this appeal from a judgment of the United States District Court for the Southern District of New York, it is hereby

ORDERED, ADJUDGED, AND DECREED that the judgment of said District Court be and hereby is affirmed.

Plaintiff-appellant Henry Jackson, Jr.

appeals from a judgment entered on April 14, 1993 in the United States District Court for the Southern District of New York (Wood, J.), dismissing with prejudice Jackson's civil rights complaint as to all defendants.

Jackson filed his complaint in this action on April 1, 1992 naming numerous defendants: Manhattan and Bronx Surface Transit Operating Authority ("MABSTOA"); Transit Supervisors Organization ("TSO"), and its Chairman Joseph O'Brien; C. Vernon Mason, Esq.; the Equal Employment Opportunity Commission ("EEOC"), and District Director Edward Mercado; New York Executive Department Division of Human Rights ("NYEDDHR"), and Regional Director Paula Sawyer; the Civil Court of the City of New York and Judge Jane S. Solomon; and the Departmental Disciplinary Committee and Deputy Chief Counsel Richard M. Maltz.

(Hon. Jane A. Restani of the United States Court of International Trade, sitting by designation.)

Jackson alleged that MABSTOA "dishonestly and secretly took a promotion from (him) and gave it to another (employee)," and then harassed him to such an extent that he was "forced" into early retirement; that TSO, his union, pretending to work on his behalf, was really "spying" for MABSTOA; that Mason exercised "bad faith" in his representation of Jackson in his EEOC proceedings against MABSTOA and conspired with the EEOC, Mercado, the NYEDDHR in an attempt to extort money from him; that the EEOC and the NYEDDHR were knowing accessories to Mason's "extortion and fraud"; that the Civil Court of New York and Judge Solomon cooperated with Mason in Jackson's suit against him; and that Malta took "unspeakable" action to protect Judge Solomon.

By Order filed on April 3, 1992, the district court referred the case to Chief Magistrate Judge Gershon. Various motions were filed by the parties, including motions to dis-

miss by the State defendants and MABSTOA pursuant to Fed. R. Civ. P. 12. In a Report and Recommendation filed July 31, 1992, the Magistrate Judge, construing the complaint as one brought pursuant to 42 U.S.C. S 1983, recommended that the complaint against MABSTOA be dismissed as barred by the statute of limitations. She also recommended that the claims against Judge Solomon be dismissed on the ground of judicial immunity. With regard to the other State defendants, she recommended that the complaint be dismissed because, to the extent that they were sued in their official capacities, they were not persons within the meaning of section 1983, and to the extent that they were sued in their personal capacities, the complaint failed to state a claim upon which relief could be granted.

In an Opinion and Order entered on April 14, 1993, the district court adopted the Magistrate Judge's Report and Recommendation and

dismissed the action as to the defendants considered in the Report. The district judge also dismissed the action with regard to the remaining defendants. Jackson filed a timely Notice of Appeal and here raises substantially the same arguments that were advanced in the district court.

1. MABSTOA

Both the Magistrate Judge and the district court concluded that Jackson's allegations of constitutional violations by MABSTOA were barred by the applicable statute of limitations. The appropriate statute of limitations for a section 1983 action arising in New York is three years. See Owens v. Okure, 488 U.S. 235, 241 (1989). Jackson alleges that the incidents underlying his claim occurred between January 4, 1985 and December 17, 1987. Jackson retired from his employment with MABSTOA in January of 1988. Therefore, since Jackson did not file his complaint in the district court until April

of 1992, his claim is time-barred.

2. The State Defendants

A. The Civil Court of New York, NYEDDHR, Departmental Disciplinary Committee

The district court held that Jackson's claim against these agencies was barred because state agencies are not amenable to suit under section 1983. Additionally, the district court found that any claim for damages against the NYEDDHR or the Committee was barred by the Eleventh Amendment. Since, absent consent to the suit, the Eleventh Amendment bars a citizen's suit in federal court against a state or one of its agencies, Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 100-01 (1984), Jackson's claim against these agencies was barred. Additionally, the district court correctly held that neither NYEDDHR nor the Committee was amenable to suit under section 1983. See Will v. Michigan Dept. of State Police, 491 U.S. 58, 70-71 (1989).

B. Sawyer and Malta

To the extent Jackson sues these defendants for money damages in their official capacities, as Regional Director of NYEDDHR and Deputy Chief Counsel of the Departmental Disciplinary Committee, respectively, his claims are barred by the Eleventh Amendment. See Berman Enters., Inc. v. Jorling, 3 F.3d 602, 606 (2d Cir. 1993) ("suit (for damages) against a state official in his official capacity is, in effect, a suit against the state itself which is barred" under the Eleventh Amendment), petition for cert. filed, 62 U.S.L.W. 3396 (Nov. 22, 1993).

Insofar as Jackson sues Sawyer and Maltz in their personal capacities, the district court correctly held that his complaint failed to state a claim upon which relief could be granted. Complaints consisting only of conclusory, general allegations of a conspiracy to deprive a person of a constitutional right are insufficient unless "amplified by specific instances of misconduct." Osrer v. Aronwald, 567 F.2d

551, 553 (2d Cir. 1977). Jackson's complaint fails to allege any specific factual instance of misconduct regarding Sawyer or Maltz. Although the complaint does allege that Maltz' "unspeakable" actions were motivated by racism, he fails to provide any specific facts underlying this allegation. Therefore, the district court correctly concluded that Jackson failed to state a claim upon which relief could be granted.

C. Judge Solomon

Under the doctrine of judicial immunity, a judge is immune from civil suits for money damages for judicial acts, unless he has acted in the "clear absence of all jurisdiction." Stump v. Sparkman, 435 U.S. 349, 355-57 (1978). Jackson's complaint and his other submissions to the district court allege, inter alia, that Judge Solomon improperly adjourned a trial date and "fixed" a judgment. Since it is clear that all of the acts alleged by Jackson were performed

by Judge Solomon in the course of her proper judicial duties, Jackson's claim against her is barred.

3. Mason

The district court held that Jackson's claim for the return of attorney's fees paid to Mason is barred by res judicata. This claim previously had been brought in a state court and there resulted in a judgment favorable to Jackson. It appears that Mason has satisfied the judgment. A federal court must give a state court judgment the same preclusive effect the state's courts would give the judgment. Polur v. Raffe, 912 F.2d 52, 55 (2d Cir. 1990), cert. denied, 499 U.S. 937 (1991). In New York, a judgment on the merits "extinguishes all rights of the plaintiff to remedies against the defendant with respect to all or part of the transaction, or series of connected transactions out of which the action arose." Hodes v. Axelrod, 70 N.Y. 2d 364, 372 (1987).

Therefore, since Judge Solomon has rendered a final judgment in Jackson's case against Mason, Jackson's claim here is barred by res judicata.

4. TSO and O'Brien

The district court held that Jackson's claim against TSO, based upon "spying" and "double-crossing," was time-barred under the applicable statute of limitations. Insofar as Jackson's complaint alleges a breach of TSO's duty of fair representation, the claim would be time-barred because Jackson's retirement from MABSTOA occurred in January of 1988, and his complaint in this action was not filed until over four years later in April of 1992. See Del Costello V. International Bhd. of Teamsters, 462 U.S. 151, 169-70 (1983) (holding that statute of limitations for federal breach of duty of fair representation suits is six months). Moreover, to the extent that Jackson alleges a claim against TSO pursuant to section 1983, his claim is time-barred by the three-year statute

of limitations referred to above.

Since Jackson sues O'Brien in his official capacity as Chairman of TSO, these Appellees are referred to collectively as "TSO".

5. EEOC and Mercado

The district court found that Jackson's claims for damages against the EEOC were barred by the doctrine of sovereign immunity. This determination was correct. Since the EEOC is a federal agency, Jackson's claim is barred. See United States v. Mitchell, 445 U.S. 535, 538 (1980); McCartin v. Norton, 674 F.2d 1317, 1322 (9th Cir. 1982). Therefore, the district court properly dismissed Jackson's claim.

We have considered Jackson's remaining arguments and find them to be without merit.

HON. ROGER J. MINER,

HON. J. DANIEL MAHONEY,
Circuit Judges,

HON. JANE A. RESTANI,
Judge.

N.B. THIS SUMMARY ORDER WILL NOT BE

PUBLISHED IN THE FEDERAL REPORTER AND SHOULD NOT BE CITED OR OTHERWISE RELIED UPON IN UNRELATED CASES BEFORE THIS OR ANY OTHER COURT.

Since Jackson sues Mercado in his official capacity as the former director of the EEOC, these appellees are referred to collectively as "EEOC."

APPENDIX B

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------X

HENRY JACKSON, JR., Plaintiff

92 civ. 2281 (KMW)

-against- OPINION AND ORDER

MANHATTAN AND BRONX SURFACE TRANSIT OPERATING AUTHORITY (M.A.B.S.T.O.A.); TRANSIT SUPERVISORS ORGANIZATION (CHAIRMAN JOSEPH O'BRIEN); C. VERNON MASON, ESQ.; EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (DISTRICT DIRECTOR EDWARD MERCADO); NEW YORK EXECUTIVE DEPARTMENT DIVISION OF HUMAN RIGHTS (REGIONAL DIRECTOR PAULA G. SAWYER); THE CIVIL COURT OF THE CITY OF NEW YORK (JUDGE JANE S. SOLOMON); DEPARTMENTAL DISCIPLINARY COMMITTEE (DEPUTY CHIEF COUNSEL RICHARD M. MALTZ),

Defendants.

----------X

WOOD D.J.

In this opinion and Order, the court addresses the motions by each of the defendants to dismiss the complaint against them on various grounds. Section I of this Opinion and Order reviews the Report and Recommendation ("Report") issued by Chief Magistrate Judge Nina Gershon with respect to the motions to

dismiss filed by Manhattan and Bronx Surface Transit Operating Authority ("MABSTOA") and defendants New York Executive Department Division of Human Rights (Regional Director Paula G. Sawyer), The Civil Court of the City of New York (Judge Jane S. Solomon) and Departmental Disciplinary Committee (Deputy Chief Counsel Richard M. Maltz) (collectively, the "State Defendants").

Section II addresses defendant C. Vernon Mason's motion to dismiss. Section III addresses defendant Transit Supervisors Organization's ("TSO") motion to dismiss. Section IV addresses the motion to dismiss filed by defendants Equal Opportunity Employment Commission ("EEOC") and District Director Edward Mercado. For the following reasons, the court grants each defendant's motion to dismiss.

I. MABSTOA and State Defendants

On July 31, 1992, Chief Magistrate Judge Gershon issued a Report recommending that the

complaint against MABSTOA be dismissed as barred by the applicable statute of limitations. The Report also recommended that the complaint against the State Defendants be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

In accordance with the Report's instructions, plaintiff pro se filed an Affidavit and a Memorandum of Law objecting to the Report on August 13, 1992. On August 26, 1992, MABSTOA and the State Defendants each filed a response to plaintiff's objections. On September 8, 1992, plaintiff filed a letter replying to the submission of the State Defendants.

Pursuant to Fed. R. Civ. P. 72(b), the court reviews the legal conclusions of the Report de novo. Upon a de novo review of the Report and the objections and response, I adopt the recommendation of the Report. Plaintiff's claims against MABSTOA and the State Defendants, in both their official and personal capacities, are dismissed with prejudice.

A. MABSTOA

The Report found that plaintiff's allegations of constitutional violations by MABSTOA are barred by the three year statute of limitations applicable in action brought under 42 U.S.C. S 1983. Chief Magistrate Judge Gershon reviewed the written submissions and the testimony offered at oral argument and concluded that plaintiff's cause of action arose, at the latest, in January of 1988. (Report at 2-3).

Plaintiff filed his complaint on April 13, 1992, well past the three year limitation period. Despite the Report's clear explanation of the defect in plaintiff's claim against MABSTOA, plaintiff's affidavit in objection alleges no facts to rebut the Report's conclusion that plaintiff's cause of action arose no later than January 1988. Plaintiff's affidavit recounts the factual assertions of his claim, noting in each paragraph the date of the alleged event commencing on January 4, 1985 and end-

ing on December 17, 1987. (Pl. 8/13/92 Aff. SS 2-6).

Plaintiff alleges that he consulted with defendant C. Vernon Mason's office on December 30, 1987 regarding his complaints against MABSTOA. (Id. S 7). Although plaintiff alleges that defendant Mason acted in bad faith in failing to pursue plaintiff's claim against MABSTOA, Mr. Mason's actions do not suspend the running of the statute of limitations against MABSTOA. The court, therefore, adopts the Report's recommendation and dismisses the complaint against MABSTOA.

B. State Defendants

The complaint, to the extent that it seeks monetary damages from the Civil Court of the City of New York, New York Executive Department Division of Human Rights, and Departmental Disciplinary Committee, must be dismissed. As state agencies, these defendants are not "persons" within the meaning of 42 U.S.C. S 1983.

See Hafer v. Melo, 112 S. Ct. 358 (1991); Will v. Michigan Dept. of State Police, 491 U.S. 58 (1989). Likewise, damage claims against New York Executive Department Division of Human Rights and Departmental Disciplinary Committee are barred by the Eleventh Amendment. The immunity afforded by the Eleventh Amendment extends to all claims against defendants Paula Sawyer and Richard Maltz in their official capacities. (Report at 4). The court, therefore, dismisses the complaint against the three state agency defendants and dismisses any claims against Paula Sawyer and Richard Maltz in their official capacities.

Plaintiff maintains that he states a claim against Paula Sawyer, Richard Maltz and Judge Jane Solomon in their personal capacities. (Pl. 9/8/92 Aff. at PP 10-14). Chief Magistrate Judge Gershon found that plaintiff failed to identify any conduct on the part of the individual defendants that violated his civil rights.

(Report at 4-5). With respect to defendants Paula Sawyer and Richard Maltz, plaintiff's objections add no new factual assertions that could in any way be interpreted to support the assertion of constitutional violations by these defendants. (Pl. 8/13/92 Aff. at 8, 9). The court, therefore, adopts the recommendation of the Report and dismisses the complaint against defendants Paula Sawyer and Richard Maltz.

The Report also concluded that any action against Judge Solomon based on her handling of plaintiff's state court action against defendant C. Vernon Mason was barred by the doctrine of absolute judicial immunity. (Report at 3). In that action, Judge Solomon entered judgment for plaintiff and ordered defendant Mason to return $3,000 of the $3,500 fee advanced by plaintiff to pursue his action against MABSTOA. Judge Solomon's decision was based on her determination of the portion of the $3,500 fee actually earned by Mr. Mason in his representa-

tion of plaintiff. Judge Solomon also dismissed Mr. Mason's counterclaim against plaintiff. (Pl. 6/29/92 Aff. Ex 15). Plaintiff tacitly acknowledges that absolute immunity bars his suit against Judge Solomon based on her discretionary act of granting an adjournment rather than entering a default judgment in favor of plaintiff in the amount of $25,000 as demanded in his complaint.

Plaintiff asserts, however, that Judge Solomon is not protected by judicial immunity because she allegedly entered into a private, prior agreement with Mr. Mason to deny plaintiff a fair trial. (Pl. 9/8/92 Let. at 2; Complaint at 3). (footnote) In support of his theory of an exception to the doctrine of absolute judicial immunity, plaintiff cites Rankin v. Howard, which held that a prior agreement by a judge to favor one side is not a judicial act afforded the protection of immunity. See Rankin v. Howard, 633 F. 2d 844, 847 (9th Cir.

1980), cert. denied sub nom. Zeller v. Rankin, 451 U.S. 939 (1981). The Ninth Circuit panel went on to hold a judge's prior agreement "could form the basis of liability whether or not he is immune from liability for subsequent judicial acts." Id. at 848.

Regarding (footnote), page 8: The paragraph of the complaint related to Judge Solomon states: "And, I am suing the Civil Court of the City of New York and Judge Jane S. Solomon for fifty million dollars ($50, 000,000.00) and one Million dollars ($1,000,000.00), respectively, for Judge Solomon's blatant cooperation with C. Vernon Mason, Esq. Against me" (Complaint at 3).

Plaintiff's reliance on Rankin is no longer availing, however, because the Ninth Circuit unanimously overruled Rankin and held that a judge's conspiracy to predetermine the outcome of a case before her does not pierce a judge's immunity as long as "the judge's ultimate acts are judicial actions taken within the court's subject matter jurisdiction. . . ." Ashelman v. Pope, 793 F.2d 1072, 1078 (9th Cir. 1986) (en banc). (2nd footnote)--Plaintiff does not al-

lege, nor could he, that Judge Solomon acted outside the scope of the Civil Court's subject matter jurisdiction. Although the Second Circuit has not addressed this issue, this court is persuaded not to recognize a "prior agreement" exception to the doctrine of judicial immunity. 3rd footnote: Before and after being overruled, Rankin was criticized by other circuit courts. See e.g., John v. Barron, 897 F. 2d 1387, 1392 (7th Cir. 1990), cert. denied, 498 U.S. 821 (1990); Moses v. Parwatikar, 813 F. 891, 893 (8th Cir.), cert. denied, 484 U.S. 832 (1987); Dykes v. Hosemann, 776 F.2d 942, 948 (11th Cir. 1985) (en banc); Holloway v. Walker, 765 F.2d 517, 523 (5th Cir. 1984), Cert. denied, 474 U.S. 1037 (1985). Under Rankin, the Seventh Circuit observed, "judges, on mere allegations of conspiracy, could be hauled into court and made to defend their judicial acts, the precise result that judicial immunity was designed to avoid." John v. Barron, 897 F.2d 1387, 1392 (7th Cir. 1990), Cert. denied, 498 U.S. 821 (1990).

The Seventh Circuit's concerns are particularly pertinent here where plaintiff's complaint takes issue with two inherently "judicial" acts: (1) that Judge Solomon improperly

adjourned a trial date rather than enter a default judgment for $25,000 as demanded in plaintiff's complaint and (2) that she entered a Decision and Order that was not accepted for docketing by the Civil Court Judgment Clerk.

Fourth footnote: Less than one month after Judge Solomon entered the defective Decision and Order, she issued an Amended Decision and Order embodying her judgment for plaintiff and dismissing defendant Mason's counterclaim. (Pl. 6/29/92 Aff. Ex. 13, 15).

(Pl. 6/29/92 Aff. at PP 4, 6). These allegations take issue with discretionary and ministerial acts within the scope of Judge Solomon's performance of her judicial duties, to which immunity attaches. Permitting plaintiff to assert a conspiracy claim premised on his conclusory allegations of a prior agreement between Judge Solomon and Mr. Mason, and supported only by the foregoing factual allegations of impropriety, would undermine the sound doctrine of judicial immunity. Plaintiff's complaint as to Judge Solomon, therefore, must be dismissed for failure to state a claim upon which relief

can be granted.

II. C. Vernon Mason

Defendant Mason moves to dismiss the complaint against him on the ground that plaintiff's claims are barred by res judicata. Mason also argues that this court lacks subject matter jurisdiction to entertain plaintiff's claims and that plaintiff's complaint fails to state a claim upon which relief can be granted. The Complaint states generally that each defendant is being sued "because they violated my Constitutional Rights." (Complaint at 1). The paragraph naming Mason alleges that Mason acted in bad faith in his representation of plaintiff and that he collaborated with the EEOC, New York State Executive Department Division of Human Rights and Judge Solomon. (Id. at 2-3).

The complaint contains conclusory allegations which are totally devoid of any factual allegations to support plaintiff's legal theories. Plaintiff has supplied numerous affida-

vits in opposition to the various motions motions containing factual assertions not present in the complaint in response to each defendant's motion. In accordance with Fonte v. Board of Managers of Continental Towers Condominium, the court treats plaintiff's affidavits and letters as amendments to the complaint. See Fonte v. Board of Managers of Continental Towers Condominium, 848 F.2d 24, 26 (2d Cir. 1988). Viewing the complaint as amended by the affidavits and letters, it appears that plaintiff cannot prove a set of facts entitling him to relief against any of the defendants. See id. (court may treat additional factual information as amendment to complaint and evaluate complaint as amended under Rule 12(b)(6).

To the extent that plaintiff is alleging a state claim against Mason arising out of Mason's representation of plaintiff in his state court suit against MABSTOA, such a claim is barred by the doctrine of res judicata. Fifth

footnote: Although plaintiff does not invoke the supplemental jurisdiction of this court to entertain state law claims in the absence of diversity jurisdiction, the court will address this issue now, in the interest of judicial economy. A federal court must give a state court judgment the same preclusive effect as would be given that judgment by the courts of the state that rendered it. See Polur v. Raffe, 912 F.2d 52, 55 (2d Cir. 1990), Cert. denied, 111 S. Ct. 1389 (1991). Under New York law, a judgment on the merits extinguishes all rights of the plaintiff to remedies against the defendant with respect to all or part of the transaction, or series of connected transactions out of which the action arose. See Hodes v. Alexander, 520 N.Y.S. 2d 933, 937 (1987). Judge Solomon's entry of judgment for plaintiff in the amount of $3,000 in the state court action bars any relitigation of plaintiff's state law claims arising out of Mason's representation of plaintiff in bad faith.

As to plaintiff's allegation of a conspir-

acy between Mason and other defendants, the Second Circuit recently held that a plaintiff states a claim under S 1983 even though the judge who is allegedly part of the conspiracy is absolutely immune from suit. See Polur, 912 F.2d at 56. In Polur, the court apparently rejected the argument Mason makes here that the plaintiff must prove that each member of a conspiracy to deny constitutional rights acted under color of state law before the court has federal question jurisdiction to entertain the conspiracy claim against a private party. See id. at 55-56 (considering adequacy of pleading of conspiracy involving attorneys and judge).

Nonetheless, a plaintiff may not rely on "vague, prolix allegations without pleading any overt acts or providing a basis in fact for his claim. It is incumbent on a plaintiff to state more than conclusory allegations to avoid dismissal of a claim predicated on a conspiracy to deprive him of his constitutional rights." Id.

at 56, Plaintiff's affidavit in opposition to Mason's motion alleges that collusion between Judge Solomon and Mason is evident from Judge Solomon's adjournment of a trial date and extension of time for Mason to file an Answer and Counterclaim. (Pl. 8/19/92 Aff. at P 3). Plaintiff does not even mention the EEOC, District Director Edward Mercado, the New York State Executive Department Division of Human Rights or Regional Director Paula G. Sawyer despite alleging their participation in Mr. Mason's conspiracy against him. Plaintiff's allegations, therefore, do not state a claim for conspiracy to deny plaintiff his constitutional rights to due process.

For the foregoing reasons, the court grants Mason's motion for summary judgment dismissing the complaint against him.

III. TSO

TSO moves to dismiss the complaint on the ground that plaintiff's complaint is time barred

and fails to state a claim for which relief can be granted. TSO is a labor union which represented plaintiff during the time he was employed at MABSTOA. TSO argues that any cognizable claim plaintiff may have had is now time barred. Plaintiff alleges in his affidavit in opposition that "as a labor union, the Transit Supervisors Organization should have promoted and protected my welfare, my interest, and my rights against the anti-campaign of MABSTOA directed against me. Instead of the TSO protecting me, it collaborated with MABSTOA. . . ." (Pl. 8/24/92 Aff. at P 4).

TSO argues that plaintiff is alleging a breach of the duty of fair representation owed to plaintiff by TSO. Such an action must be commenced within six months from the time when plaintiff is aware or reasonably aware that the duty has been breached. See Del Costello v. Int'l Brotherhood of Teamsters, 462 U.S. 151, 169-70 (1983); Santos v. District Council, 619

F.2d 963, 969 (2d Cir. 1980).

Assuming arguendo that TSO may be held liable to plaintiff for a violation of S 1983, plaintiff's claims against TSO, like those against MABSTOA, are governed by the three year statute of limitations discussed in Section I. For the reasons stated in Section I, plaintiff's claim of breach of duty of fair representation and constitutional claims against TSO are time barred because plaintiff commenced this action more than four years after the cause of action accrued.

In response to TSO's motion papers, plaintiff filed an affidavit arguing that TSO's motion to dismiss should be denied because TSO "is guilty of both fraud and breach of contract whose statute of limitations run six (6) years each." (Pl. 8/24/92 Aff. at P 3). In an overt attempt to amend his complaint, plaintiff states in his August 24, 1992 affidavit, after the issuance of the Report, that he is "charging"

each of the defendants with both fraud and breach of contract. (Id. at P 9). As with plaintiff's purported state law claims against Mason, the court declines to exercise supplemental jurisdiction over plaintiff's breach of contract and fraud claims founded upon state law in the absence of diversity jurisdiction. Because no federal claim survives defendants' collective motions, the court should decline to exercise supplemental jurisdiction over these claims in light of the early stage of this litigation. See 28 U.S.C. S 1367 (c)(3) (West's Supp. 1992). Thus, the complaint against TSO and its chairman Joseph O'Brien (if he has also been named as a defendant) must be dismissed. Sixth footnote: The motion is made on behalf of TSO although the caption includes the name of Chairman Joseph O'Brien. The complaint also makes reference to Mr. O'Brien. To the extent Mr. O'Brien is being sued here, he is being sued in his official capacity, and any claims against him arising out of plaintiff's alleged forced retirement are likewise time barred.

IV. EEOC and District Director Edward Mercado

EEOC and District Director Edward Mercado move to dismiss plaintiff's complaint against them based on this court's lack of subject matter jurisdiction and the absence of an express or implied right of action by plaintiff against the EEOC and its employees acting in their official capacities. Lastly, the EEOC argues that plaintiff fails to state a claim upon which relief can be granted.

In response, plaintiff explained in an affidavit that his "intention has never been to sue the E.E.O.C. or Mr. Edward Mercado." (Pl. 8/31/92 Aff at P 2). Rather, plaintiff "just want(s) to know why this agency allowed C.Vernon Mason, Esq. to process a fraudulent Charge of Discrimination pretending to be on my behalf since he was no longer my lawyer as of July 19, 1988." (Id. at P 3). Plaintiff and the EEOC discussed the possibility of entering into a stipulation dismissing the claims against the EEOC and Mr. Mercado. (Riordan 9/28/92 Letter

to Judge Gershon). Because that stipulation was never entered, the court proceeds to rule on the motion as submitted.

For the reasons stated in the EEOC's Memorandum In Support of Its Motion to Dismiss, the court concludes that neither Title VII of the Civil Rights Act of 1964 nor any other source provides a basis for this court to exercise jurisdiction over such a claim against the EEOC. Further, the EEOC's processing of a complainant's Title VII charges does not implicate any constitutional right because its role is investigative and nonadjudicatory. See Francis-Sobel v. University of Maine, 597 F.2d 15, 17 (1st Cir.), Cert. denied, 444 U.S. 949 (1979); Georator Corp. v. Equal Employment Opportunity Comm'n, 592 F.2d 765, 768-69 (4th Cir. 1979).

Plaintiff's claim for $25,000,000.00 in damages from the EEOC is barred by the doctrine of sovereign immunity. See United States v. Mitchell, 445 U.S. 535, 538 (1980); Alkatabi v.

U.S. Dept. of Justice I.N.S., 777 F. Supp. 271, 274 (S.D.N.Y. 1991), affirmed without opinion, 962 F.2d 4 (2d Cir.), cert. denied, 112 S. Ct. 2947 (1992). Therefore, Plaintiff's claims against the EEOC and Edward Mercado must be dismissed.

Conclusion

For the foregoing reason, the Clerk of the Court is hereby ordered to dismiss the complaint, with prejudice, against all defendants.

So Ordered.

Dated: New York, NY
April 9, 1993

Kimba M. Wood
United States
District Judge

APPENDIX C

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------X

HENRY JACKSON, JR., Plaintiff,

92 CIVIL 2281 (KMW)

-against-

JUDGMENT

April 14, 1993

MANHATTAN AND BRONX SURFACE TRANSIT OPERATING AUTHORITY (M.A.B.S.T.O.A.); TRANSIT SUPERVISORS ORGANIZATION (CHAIRMAN JOSEPH O'BRIEN); C. VERNON MASON, ESQ.; EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (DISTRICT DIRECTOR EDWARD MERCADO); NEW YORK EXECUTIVE DEPARTMENT DIVISION OF HUMAN RIGHTS (REGIONAL DIRECTOR PAULA G. SAWYER); THE CIVIL COURT OF THE CITY OF NEW YORK (JUDGE JANE S. SOLOMON); DEPARTMENTAL DISCIPLINARY COMMITTEE (DEPUTY CHIEF COUNSEL RICHARD M. MALTZ),

Defendants.

---------- X

All defendants having moved to dismiss the complaint against them on various grounds, and the said motions having come before the Honorable KIMBA M. WOOD, U.S.D.J., thereafter the matter having been referred to Chief Magistrate Judge Nina Gershon for a report and recommendation, and the Court thereafter on April 13,

1993, having rendered its opinion and order (# 71341); adopting the Report and Recommendation of Chief Magistrate Judge Nina Gershon, dated July 31, 1992, and granting each defendant's motion to dismiss, and directing the Clerk of the Court to dismiss the complaint, with prejudice, against all defendants, it is,

ORDERED, ADJUDGED AND DECREED: That the Report and Recommendation of Chief Magistrate Judge Nina Gershon, dated July 31, 1992, be and it is hereby adopted, and it is further,

ORDERED, that each defendant's motion to dismiss be and it is hereby granted, and it is further,

ORDERED, that the complaint be and it is hereby dismissed with prejudice against all defendants for the reasons stated in the Court's Opinion and Order, dated April 13, 1993.

DATED: NEW YORK, NEW YORK
April 14, 1993

Clerk

By: Deputy Clerk

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------X

HENRY JACKSON, JR., Plaintiff,

-against-

REPORT AND RECOMMENDATION

92 civ. 2281 (KMW)

MANHATTAN AND BRONX SURFACE TRANSIT OPERATING AUTHORITY (M.A.B.S.T.O.A.); TRANSIT SUPERVISORS ORGANIZATION (CHAIRMAN JOSEPH O'BRIEN); C. VERNON MASON, ESQ.; EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (DISTRICT DIRECTOR EDWARD MERCADO); NEW YORK EXECUTIVE DEPARTMENT DIVISION OF HUMAN RIGHTS (REGIONAL DIRECTOR PAULA G. SAWYER); THE CIVIL COURT OF THE CITY OF NEW YORK (JUDGE JANE S. SOLOMON); DEPARTMENTAL DISCIPLINARY COMMITTEE (DEPUTY CHIEF COUNSEL RICHARD M. MALTZ),

Defendants.

----------X

GERSHON, Chief Magistrate Judge:

Plaintiff pro se Henry Jackson, Jr. brings this suit to challenge, on constitutional grounds, his alleged forced retirement from the defendant Manhattan and Bronx Surface Transit Operating Authority ("MABSTOA") in 1988 and the alleged misconduct of various other entities and persons from whom he sought assistance with

regard to his treatment by MABSTOA. Plaintiff seeks damages from all defendants. This report addresses the motion for judgment on the pleadings, pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, brought by MABSTOA and the motion to dismiss pursuant to Rule 12(b)(1) and (6) by the following state defendants: New York Executive Department Division of Human Rights (Regional Director Paula G. Sawyer), The Civil Court of the City of New York (Judge Jane S. Solomon), Departmental Disciplinary Committee (Deputy Chief Counsel Richard M. Maltz). At a pretrial conference held on July 21, 1992, schedules for motions to dismiss by the other defendants were set.

MABSTOA

The complaint against MABSTOA should be dismissed as barred by the statute of limitations. Plaintiff alleges that the defendants violated his constitutional rights. Although he does not specify reliance upon 42 U.S.C. S

1983, reading the pro se complaint liberally, Haines v. Kerner, 404 U.S. 519, 520-21 (1972), reliance on that provision will be assumed.

The statute of limitations applicable to this Section 1983 claim is three years. Owens v. Okure, 488 U.S. 235 (1989). The complaint was filed on April 13, 1992, more than three years after the alleged unlawful forced retirement by MABSTOA. According to the Answer, this retirement occurred in January of 1988. A review of all of the documents filed by plaintiff in this action, and his statements on oral argument of the motion, confirm that plaintiff's claim against MABSTOA arose, at the latest, at the time of his retirement and that that retirement took place in 1988. While plaintiff continued to complain in various forums about MABSTOA after that, his claim arose in 1988. Therefore, the motion to dismiss the complaint against MABSTOA should be granted.

State Defendants

Plaintiff sues three state defendants: New York Executive Department Division of Human Rights (Regional Director Paula G. Sawyer); The Civil Court of the City of New York (Judge Jane S. Solomon); Departmental Disciplinary Committee (Deputy Chief Counsel Richard M. Maltz).

Civil Court (Judge Solomon)

Judge Solomon's alleged violations of plaintiff's rights occurred in the context of plaintiff's suit against his lawyer, defendant C. Vernon Mason, for a return of a $3500 fee. I take judicial notice of Judge Solomon's decision awarding plaintiff $3000 of the $3500 fee paid. Judge Solomon is protected by the long-established doctrine of judicial immunity; she may not be sued for money damages for acts, like those alleged here, done in the exercise of her judicial function. Stump v. Sparkman, 435 U.S. 349, 355-56 (1978); Pierson v. Ray; 386 U.S. 547, 553-54 (1967); Fields v. Soloff, 920 F.2d 1114, 1119 (2d Cir. 1990). The complaint as to

Judge Solomon must be dismissed.

New York Executive Department Division of Human Rights (Paula G. Sawyer) and Departmental Disciplinary Committee (Deputy Chief Counsel Richard M. Maltz)

Insofar as plaintiff seeks to sue State agencies, or State officers in their official capacities under Section 1983, the action must fail because State agencies and State officers acting in their official capacities are not persons under Section 1983. Hafer v. Melo, __U.S. __, 112 S. Ct. 358 (1991); Will v. Michigan Department of State Police, 491 U.S. 58 (1989).

Insofar as the complaint can be read to be directed against State officers in their personal capacities, it fails to state a claim upon which relief may be granted. A civil rights complaint "must contain specific allegations of fact which indicate a deprivation of constitutional rights; allegations which are nothing more than broad, simple, and conclusory statements are insufficient to state a claim under S1983." Alfaro Motors, Inc. v. Ward, 814 F.2d

883, 887 (2d Cir. 1987); Powell v. Jarvis, 460 F. 2d 551 (2d Cir. 1972). This rule is particularly applicable to complaints resting, as this one does, on conclusory allegations of a conspiracy to deprive the plaintiff of his constitutional rights. Polur v. Raffe, 912 F.2d 52, 56 (2d Cir. 1990), cert. denied, ___U.S. _, 111 S. Ct. 1389 (1991); Ostrer v. Arronwald, 567 F.2d 551, 553 (2d Cir. 1977). Pro se complaints, though read sympathetically and closely, are not relieved of these pleading requirements. E.Q. Powell, supra; Wade v. Carey, 503 F. Supp. 25, 26 (S.D.N.Y. 1980).

The sole claim against the Division of Human Rights is that it was a knowing accessory to Mason's alleged "extortion and fraud" in representing plaintiff against MABSTOA. The sole claim against the Disciplinary Committee is set forth in the complaint as follows:

> Finally, I am suing the Departmental Disciplinary Committee and Deputy Chief Counsel Richard

> M. Maltz for fifty million dollars ($50,000,000.00) and one million dollars ($1,000,000.00), respectively, for the unspeakable action Counsel took to protect Judge Solomon.
>
> Deputy Chief Counsel Richard M. Maltz unjust action is best left to be explained, illustrated, and proven before a jury.

Plaintiff alleges that Maltz was motivated by racism, but never identifies any acts which constitute a violation of his civil rights nor a conspiracy to violate his civil rights. Review of plaintiff's affidavit in opposition to the motion to dismiss adds only vague and conclusory allegations of conspiratorial motive on behalf of these defendants and Mason but fails to identify any conduct which violated his civil rights. The complaint against these defendants should be dismissed.

Copies of this report are being mailed today to plaintiff pro se and defendants' counsel who are hereby put on notice that any objections to this report must be made in conformity with 28 U.S.C. 636(b)(1) and Rules 72(b), 6(a) and

6(e) of the Federal Rules of Civil Procedure. Thus, a party must serve and file, with a copy to me, specific written objections to the report within ten (10) days after being served with a copy of this report. A party that fails to file timely objections waives the right to further judicial review, including appellate review, of the decision. Small v. Secretary of HHS, 892 F.2d 15, 16 (2d Cir. 1989). See Thomas v. Arn, 474 U.S. 140, 148-53 (1985); Wesolek v. Canadair Ltd, 838 F.2d 55, 58 (2d Cir. 1988). Any requests for extensions of time to file objections should be made to Judge Wood.

Respectfully submitted,

NINA GERSHON
Chief Magistrate Judge

Dated: New York, New York
July 31, 1992

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 23rd day of February one thousand nine hundred and ninety-four.

Present:

Hon. Roger J. Miner,
Hon. J. Daniel Mahoney, Circuit Judges,
Hon. Jane A. Restani,*

Henry Jackson, Jr., Appellant,

v. Docket No. 93-6102
FEB 23, 1994

Manhattan and Bronx Surface Transit Operating Authority, et al.,
Appellees.

A petition for rehearing having been filed herein by pro se appellant Henry Jackson, Jr.,

Upon consideration thereof, it is

Ordered that said petition be and it hereby is DENIED.

FOR THE COURT,
GEORGE LANGE III, Clerk
By: _____
Carolyn Clark Campbell
Chief Deputy Clerk

*Hon. Jane A. Restani of the United States Court of International Trade, sitting by designation.

APPENDIX E

AMENDMENT XIV TO THE UNITED STATES CONSTITUTION

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or Property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

5. The Congress shall have power to enforce by appropriate legislation the provisions of this article.